

TABLE 17. OFFSET PROVISIONS IN STATE WORKERS' COMPENSATION LAWS

ALASKA

Section 23.30.225(a)--When periodic retirement of survivors' benefits are payable under Title II of the Social Security Act (42 U.S.C., 301 et. seq.), the weekly compensation for total disability or death shall be reduced by an amount equal to one-half of the Federal benefits for such week. (b)--When a claim has been filed under this chapter, any weekly disability benefits payable shall be offset by benefits in accordance with 42 U.S.C., 401 et. seq., by an amount which exceeds 80 percent of the employee's average weekly wage at the time of injury.

ARKANSAS

Section 11-9-522(f)--Any permanent partial disability benefits payable to an injured worker age 65 or older shall be reduced by 50 percent of the amount of benefits an injured worker receives or is eligible to receive from a publicly or privately funded retirement or pension plan, but shall not be reduced by employee contributions to a privately funded retirement or pension plan.

CALIFORNIA

Section 4753--Additional compensation for subsequent injuries shall be reduced by any monetary payments from any source, except for a pension or a service-connected disability which was incurred in the U.S. armed forces.

Section 4904--Permits liens to be made against temporary total disability indemnity for any unemployment compensation disability benefits being received.

COLORADO

Sections 8-50-103 and 8-51-101--Benefits for disability in this State shall be reduced by 50 percent and for death by 100 percent of any Federal OASDI payments, the workmen's compensation act of another State or the Federal Government, or an employer pension or disability plan.

Section 8-51-101(1)(c)(ii)--Permanent total disability benefits shall be reduced by 50 percent of any Federal OASDI payments received after the claimant reaches the age of 65, or in the case of a claimant who begins to receive employer-paid retirement payments at the age of 65, by an amount determined as a percentage of such benefits.

Section 8-51-101(1)(f)--Weekly temporary and permanent total disability benefits shall be offset by 100 percent of any unemployment compensation benefits received for the same week, with certain exceptions.

TABLE 17. OFFSET PROVISIONS (cont.)

COLORADO (cont.)

Section 8-42-112--Provides that if the claimant or dependent is receiving Social Security disability benefits (OASDI), and a reduction is made from State workers' compensation benefits as an offset, and the claimant is subject to workers' compensation benefits being further reduced because of contributory negligence, then such reduction shall be computed on the amount after, not before the OASDI offset is made.

Section 8-42-113.5--Receipt of benefit payments under Social Security or an employer-paid retirement benefit plan while receiving workers' compensation benefits constitutes an overpayment and subjects an award to re-opening and recovery of such payments.

Section 8-42-103--Placed limitations on the offset against permanent total disability benefits for private pension benefits. All contributions made by an employer to a private pension plan pursuant to a collective bargaining agreement shall be considered to have been made by the employee for purposes of calculating any offset against such benefits. Provided that such offset is limited to cases where an employer does not participate in the Federal old-age, survivors and disability insurance programs.

CONNECTICUT

Section 31-307(e)--An employee's total incapacity shall be reduced while the employee is entitled to receive old age insurance benefits pursuant to the Federal Social Security Act. The amount of each reduced workers' compensation payment shall equal the excess, if any, of the workers' compensation payment over the old age insurance benefits.

DISTRICT OF COLUMBIA

Section 36-308(g)--Weekly compensation benefits are offset if the sum of any Federal Old Age Survivors Insurance benefits, or any employee benefit plans subject to the Employee Retirement Income Security Act of 1974, or any other employee income maintenance plan which is funded solely by the employer plus such weekly compensation benefits exceeds 80 percent of the employee's average weekly wage.

FLORIDA

Section 440.15(3)(b)(4)--Provides that if an employee is entitled to both wage-loss benefits and Social Security retirement benefits, the Social Security retirement benefits will be primary and wage-loss benefits supplementary. The sum of any combined benefits must not exceed the amount of wage-loss benefits which would otherwise be payable.

TABLE 17. OFFSET PROVISIONS (cont.)

FLORIDA (cont.)

Section 440.15(9)--Weekly compensation benefits for disability are offset by the amount of any Federal OASDI payments so that the claimant's total benefits do not exceed 80 percent of his/her average weekly wage.

Section 440.15(10)(a)--No weekly compensation payments are made for temporary or permanent total disability under the workers' compensation law for any week in which unemployment compensation benefits are paid.

Section 440.15(10)(b)--Offsets wage-loss or temporary partial disability benefits by the amount of any unemployment compensation benefit payments.

Section 440.39(3)(a)--Provides that workers' compensation benefits received by a migrant worker will be offset 100 percent against any benefits recovered under the Migrant and Seasonal Agricultural Worker Protection Act.

KANSAS

Section 44-510g(o)--No compensation will be payable for temporary total or temporary partial disability under the workers' compensation law for any week that an employee is receiving unemployment compensation benefits under the employment security law, under the law of another State, or under a similar Federal law.

KENTUCKY

Section 342.730--If an injury or last exposure occurs before an employee's 65th birthday, any income benefits awarded must be reduced by ten percent beginning at age 65 and by 10 percent each year thereafter until and including age 70. Income benefits shall not be reduced beyond the employee's 70th birthday.

LOUISIANA

Section 1225--Permanent total disability benefits payable under the Act will be reduced for those recipients who are also receiving Federal OASDI benefits. This reduction is to be made only to the extent that the amount of the combined Federal and State workers' compensation benefits would otherwise cause or result in a reduction of the Federal benefits pursuant to the Social Security Act (42 U.S.C., Section 424a).

Section 1225-B--No compensation will be paid for temporary or permanent total disability or supplemental earnings benefits during any week in which the employee is receiving or entitled to receive unemployment compensation benefits.

TABLE 17. OFFSET PROVISIONS (cont.)

MAINE

Section 111-A--Offsets benefits for personal injury or disease under an insured disability or medical payments plan against payments for workers' compensation.

Section 62-A--Reduces benefit payments by the amount of any concurrent unemployment compensation benefits, excluding lump sum settlements and scheduled permanent partial disabilities.

Section 62-B--Reduces total and partial disability benefits by:

- (1) fifty percent of the amount of old age insurance benefits received under the Federal Social Security Act;
- (2) the after tax amount of the payments received under an employee benefit plan provided by the same employer, if the employee did not contribute directly to the plan; and,
- (3) the proportional amount, based upon the ratio of the employer's contributions to the total contributions, if the employee did contribute directly to the plan.

MARYLAND

Section 36(1)(a)--Cost-of-living increases for employees who are entitled to compensation for permanent total disability under this section and for disability under the Federal Social Security Act will be reduced to avoid a diminution of the Federal benefits.

MASSACHUSETTS

Section 36 B(1)--No benefit shall be payable for temporary total and permanent total disability for any week in which the employee has received or is receiving unemployment compensation benefits.

Section 36 B(2)--Any unemployment compensation benefits received will be credited against partial disability benefits for the same period or credited against any future partial disability benefits which are or may become payable.

MICHIGAN

Section 418.354--Temporary total disability benefits will be reduced by 50 percent of any Social Security benefits; and by amounts received after taxes under any self-insurance plan, wage continuation plan, pension or retirement plan provided by the employer to which the employee does not contribute.

Section 418.354(1)(f)--Temporary total disability benefits will be coordinated with those from employer contributions to a qualified profit sharing plan where the employer does not provide a pension plan.

Section 418.358--Offsets temporary total, permanent total, and permanent partial disability benefits under the Workers' Compensation Act dollar for dollar by unemployment compensation benefits.

TABLE 17. OFFSET PROVISIONS (cont.)

MINNESOTA

Section 176.101, Sub. 4--After \$25,000 is paid for permanent total disability, benefits paid by any government disability program, or any old age and survivors' insurance benefits program are credited against workers' compensation benefits, if such disability benefits are occasioned by the same injury.

Section 176.111, Sub. 21--Death benefits shall not exceed 100 percent of the deceased employee's weekly wage at the time of the injury causing his death, when the total weekly government survivor benefits and the State workers' compensation benefits are combined, nor be payable for any week in which the government benefits exceed such percentage.

MONTANA

Sections 39-71-701(2) and 39-71-702(2)--If periodic disability benefits are payable to the worker under the Federal OASDI, weekly temporary total and permanent total disability benefits resulting from both injury and occupational disease shall be reduced by an amount approximating one-half (but not below zero) of the Federal benefit for such week which amount is to be calculated from the date of the Social Security disability entitlement.

NEW JERSEY

Section 34:15-29--Workers' compensation benefits may be offset against disability pension benefits or payments.

Section 34:15-95.4--Supplemental benefits for permanent total disability and death shall be offset by Federal survivor or disability benefits, black lung, or disability pension benefits.

Section 34:15-95.5--Reduces permanent total disability or subsequent injury benefits of individuals under age 62 by Social Security benefits where the period of disability began after December 31, 1979.

NEW MEXICO

Section 52-1-70 A&B--Offsets unemployment compensation benefits against total disability benefits. If a worker is concurrently entitled to both types of benefits, the unemployment compensation benefits shall be primary and total disability benefits shall be supplemental only, and the sum of the two benefits shall not exceed the amount of total disability benefits otherwise payable.

NEW YORK

Section 16(1-c) and(7)--Applies a statutory offset of a sole surviving spouse's compensation by up to 50 percent of his or her Social Security benefits, if any. Further, provides that in computing the offsets, any increase in benefits under the Social

TABLE 17. OFFSET PROVISIONS (cont.)

NEW YORK (cont.)

Security Act that occurs after the date of death shall not be considered; and any such offset shall be equally applicable to payments under the Social Security Act which are received retroactively, but shall not apply to increases for such benefits received retroactively.

NORTH CAROLINA

Section 97-42.1--Provides that compensation for temporary total or permanent total disability benefits may be reduced by the amount of any unemployment insurance benefits received for the same period.

NORTH DAKOTA

Section 65-05-08--Offsets partial or total disability benefits of any worker who fails to report wages received from any part-time or full-time employment.

Section 65-05-09.1--The aggregate benefits payable for temporary total or permanent total disability shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half of the benefits payable under Title II of the Social Security Act (42 U.S.C. 423) and will not be affected by any increase or decrease in Federal benefits. Any escalation of temporary or permanent total disability benefits, which would adversely affect the bureau's right to offset workers' compensation benefits against Social Security benefits, shall not be applicable to persons whose benefits are offset, as provided for in this chapter.

Section 65-05-09.2--Retirement Offset. If a claimant is entitled to permanent total disability benefits and Social Security retirement benefits under 42 U.S.C. sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's Social Security retirement offset must equal 40 percent of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability to the current State's average weekly wage. Any offset calculated cannot exceed 40 percent of the employee's weekly Social Security retirement benefit. If a claim has been accepted on an aggravation basis and the worker is eligible for Social Security benefits, the bureau's offset must be proportionally calculated.

OHIO

Section 4123.56--Applies an offset against temporary total disability payments in the event of concurrent and duplicative benefits under an employer funded nonoccupational benefits plan.

TABLE 17. OFFSET PROVISIONS (cont.)

OREGON

Section 656.209--Provides for a Social Security offset against permanent total disability benefits determined and authorized by the Department in each case. Such offsets must not result in a reduction of benefits to an amount less than the greater of the workers' compensation benefit, the total family benefit under Social Security, or 80 percent of the average current earnings as determined by Social Security.

PENNSYLVANIA

Section 204(A)--Provides that 50 percent of Social Security old age or retirement benefits, and 100 percent of severance benefits and the benefits from an employer-funded pension plan shall be offset against workers' compensation benefits.

SOUTH CAROLINA

Section 42-7-67(A)&(C)--Compensation for an injury or death of a member of the State National Guard will be reduced by the amount of any Federal benefit payments; however, if the State benefits are greater than the Federal benefits due, the member may elect to receive the State benefits and thereby not be subject to any offset of benefit payments.

UTAH

Section 35-1-67(4)--After the first 312 weeks of permanent total disability payments have been made, future payments will be reduced by the dollar amount of 50 percent of the Social Security retirement benefits received by the employee during the same period.

Section 35-1-68(2)(A)(ii)--Reduces weekly death benefits to wholly dependent spouses after the first six-year period following an employee's death by 50 percent of any Federal Social Security death benefits.

WASHINGTON

Section 51.32--Reduces temporary and permanent total disability benefits to allow an offset for Social Security retirement benefits under the Federal OASDI, in a manner similar to Section 51.32.220.

Section 51.32.220--Reduces temporary and permanent total disability benefits for persons under age 65 by an amount equal to the benefits payable under the Federal OASDI, under certain conditions.

TABLE 17. OFFSET PROVISIONS (cont.)

WEST VIRGINIA

Section 23-4-23(b)(1)(2)--Provides for a reduction of permanent total disability (PTD) benefits by 50 percent of the amount of full old age Social Security insurance benefits. Also provides for a reduction of PTD benefits by the after tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by an employer if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy.

WISCONSIN

Section 102.44(5)--Reduces disability benefits under this section when the employee also receives Social Security disability benefits. Combined workers' compensation and Social Security disability benefits are limited to 80 percent of the employee's average current earnings. However, such benefits may not be reduced to an amount less than the benefits payable under this chapter.

WYOMING

Section 27-14-401(iii)--Prohibits an employee who is receiving unemployment compensation to receive disability benefits under the Workers' Compensation Act.